

 Office of Community Complaints PROCEDURAL INSTRUCTION	DATE OF ISSUE	EFFECTIVE DATE	NO.
	SUBJECT Community Complaints		AMENDS
REFERENCE Section 84.420.1 and 84.430 RSMo.		RESCINDS	

I. INTRODUCTION

- A. The Office of Community Complaints (OCC) was established in 1969 by the Board of Police Commissioners of Kansas City (Board) to receive and review complaints filed against members (department members) of the Kansas City Missouri Police Department (KCPD).
- B. OCC, originally established as the Office of Citizen Complaints, assists the Board in carrying out its duties and responsibilities as an oversight agency under the provisions of Section 84.430 RSMo.
- C. The purpose of this policy is to provide guidelines and procedures for reviewing and processing community complaints made by persons against department members of the KCPD.

II. TERMINOLOGY

- A. **Conciliation** – The informal resolution of a complaint without the need for a formal investigation. Conciliations may take place with the Executive Director of OCC or the Executive Director's designee and the complainant, or with the Executive Director of OCC or the Executive Director's designee, the complainant and the department member's chain of command.
- B. **Mediation** – The informal resolution of a complaint through the use of persons trained as mediators. These persons must be neutral, outside parties. Mediators will not be compensated for their services.
- C. **Secretary/Attorney** – Use of this term shall mean the Secretary/Attorney for the Board of Police Commissioners appointed pursuant to Section 84.420.2(4), RSMo.

- D. Community complaints alleging improper actions will be classified in one of the following six (6) defined categories:
1. **Bias-Based Policing** – Circumstances where the police actions of a department member were substantially based on the race, ethnicity, gender, age, sexual orientation, religious beliefs, disabilities, or national origin of a person, rather than upon lawful and appropriate police training and procedures.
 2. **Discourtesy** – Circumstances where the actions or statements of a department member were in violation of the KCPD written directive entitled, “Code of Ethics and Rules of Conduct,” based upon the context of the contact with the complainant. For example, the use of ethnic slurs would be classified as discourtesy.
 3. **Excessive Use of Force** – Circumstances where a department member used more force than is reasonably necessary to arrest a suspect, take a suspect into custody, stop a suspect for investigation, control a situation, restore order, or maintain discipline.
 4. **Harassment** – Circumstances where a department member has had repeated or continued contact with a person without lawful police justification.
 5. **Improper Member Conduct** – Circumstances where the behavior of a department member was unprofessional, unjustified, beyond the scope of the authority of the member, unauthorized by KCPD written procedures or training, or constituted an unreasonable lack of police service.
 6. **Improper Procedure** – Circumstances where an administrative or procedural requirement was not met. This includes, but is not limited to, improper search and seizure, omission of the Miranda Warning where required, etc.
- F. The findings of the OCC will fall into one of the following defined categories:
1. **Exonerated** – The alleged act did occur but the department member engaged in no misconduct because the actions of the department member were lawful, justified and/or proper.
 2. **Not Sustained** – The evidence fails to prove that an act of misconduct occurred.

3. **Sustained** – The alleged act occurred and was without lawful police justification.
4. **Unfounded** – The act alleged by the complainant did not occur or the subject department was not involved in the act.

G. Other dispositions

1. **Closed** – The complaint was closed due to the following circumstances: lack of jurisdiction, no violation of KCPD written directive, training or mediation, pending litigation, complainant anonymity, or third-party complaint.
2. **Non-cooperation** – The complainant failed to cooperate.
3. **Resolved without investigation** – Any complaint which is mediated, conciliated, or resolved prior to an Internal Affairs Unit (IAU) investigation.
4. **Withdrawn** – The complainant did not wish to pursue the complaint.

III. GENERAL GUIDELINES

- A. OCC is under the supervision of the Executive Director who shall report to the Board and who shall be responsible for the supervision of the OCC staff and for carrying out the provisions of this policy.
- B. The duties of the Executive Director of OCC, assisted by the staff, are to:
 1. Receive complaints filed against department members.
 - a. Complaints shall be classified as set forth in Section II, E, of this directive.
 - b. OCC may add sub-classifications based upon facts reasonably raised by the complainant.
 2. Record and account for the filing and disposition of all such complaints that are filed.
 3. Conduct an initial interview in person or by phone with each person that files a complaint for the purpose of establishing the proper category of the complaint.

4. Where appropriate, attempt to resolve the issues of the complaint without formal investigation using either OCC staff or a supervisor/commander of the KCPD.
5. Refer the complaint for further investigation to the IAU.
6. Review and make recommendations on complaints after IAU has completed its investigation.
7. Submit individual summaries of complaints to the Board and the Chief of Police (Chief) of KCPD.
8. Present appropriate monthly statistical reports, monthly reports on the status of active complaints and an annual report to the Board and the Chief.
9. Make appropriate notifications to complainants concerning their complaints.
10. Maintain a file on complaints, which shall include, but not be limited to, the original complaint and the findings of OCC. The completed investigative file, which is the property of OCC, may be stored in IAU.
11. Provide information to the complainant when it is necessary for the resolution of a complaint.
12. Meet with community groups, civic organizations, and professional groups in order to educate and inform members of the public on the purpose of OCC and the complaint filing process.

IV. FILING REQUIREMENTS AND IMPOSITION OF DISCIPLINE

- A. Complaints will not be accepted more than 90 days after the date of occurrence. However, upon a showing of special circumstances that demonstrate good cause for accepting an untimely complaint, the Executive Director of OCC may accept a complaint more than 90 days, but, in any event, not more than one (1) year after the date of the occurrence.
- B. The Chief shall have sole authority to recommend and impose discipline subject to current KCPD directives.

- C. If OCC believes that an investigation indicates a department member has committed a directive violation unrelated to the subject matter of the complaint, OCC will not sustain the complaint on that basis.

V. PROCEDURES

This directive has been arranged in annexes for easy reference as follows:

Annex A Receiving Community Complaints

Annex B Processing and Investigating

Annex C Analyzing and Recommendations

Annex D Access to Complaint Files

Pearl Fain
OCC Executive Director

Adopted by the Board of Police Commissioners this ____ day of _____, 20__.

Michael C. Rader
Board President

RECEIVING COMMUNITY COMPLAINTS

A. Complaints may be made by the Following Persons

1. Any individual seventeen (17) years of age or older who was personally involved in the incident that gives rise to the complaint.
2. Any individual under the age of seventeen (17) who provides documentation indicating they are a certified juvenile (certified by the court as an adult).
3. The parent or legal guardian of any person under the age of seventeen (17) years who was involved in the occurrence that gives rise to the complaint. The parent or legal guardian:
 - a. Must accompany the individual under seventeen (17), and
 - b. Will be listed as a co-complainant, and
 - c. Must sign the Complaint Report, Form 337 P.D. (Complaint Form).

B. Completion of the Complaint Form

1. The complaint process will be initiated by the completion of the Complaint Form by the complainant, guardian, or advocate for the complainant.
2. If the Complaint Form is completed in paper form, it must be signed and verified by the oath of the complainant as set for in the Missouri Revised Statutes, Section 84.430.1. Unsigned complaints not completed on-line (in paper form) will not be investigated. If the complainant refuses to sign the Complaint Form:
 - a. "Refused to Sign" will be entered on the complainant's signature line.
 - b. If the complainant continues to refuse to sign the Complaint Form, the OCC file will be closed.
3. The complaint must describe, to the best of the complainant's ability, the date, time, and location of the occurrence giving rise to the complaint.
4. Formal complaints will not be accepted by telephone. Individuals wishing to make a formal complaint by telephone will be advised:

- a. to go to any police station or approved location as listed on OCC's website to complete and submit the complaint, or
- b. To access the Complaint Form through OCC's website and:
 - (1) Mail the completed form to the OCC office, or
 - (2) Submit the completed form electronically to communitycomplaints@kcpd.org.

C. Complaints made in Person at a Non-Police Facility

The Executive Director of OCC shall be responsible for ensuring that complaint reports are collected weekly from a non-police facility.

D. Complaint Received by Mail in the Office of Community Complaints

- 1. The complainant will be contacted by an OCC Analyst to arrange for the completion and verified signature on the Complaint Form.
- 2. The complaint will be processed in accordance with this directive.

E. Anonymous Complaints

- 1. Anonymous complaints will not be processed.
- 2. However, an anonymous complaint that contains specific information may be accepted by the Executive Director of OCC for purposes of identifying incidents or trends that should be reported to the Board and the Chief. The Executive Director may refer any such complaint to the Chief who may order an internal investigation of the matter or take such other action as the Chief believes appropriate.

F. The Following Complaints will not be investigated

- 1. Incidents involving the appropriateness of the issuance of a Citation or Summons.
- 2. Complaints **only** challenging the validity of a search or arrest warrant and/or alleging property damage related to the execution of a search or arrest warrants. Those complaints will be referred to the KCPD Office of the General Counsel (OGC).

3. Complaints relating to allegations of damage or missing property from vehicles stored in the City Tow Lot as the City Tow Lot is operated by the City of Kansas City, Missouri, not KCPD or the Board.

G. The Following Complaints will be Accepted but not Investigated

1. Complaints involving situations where the OCC and/or the KCPD OGC have/has been notified directly by the complainant's attorney, or by service of process that a claim or lawsuit will be or has been filed against the Board, the KCPD, or a department member of either will be held in abeyance. OCC will:
 - a. Notify the complainant(s) that due to their claim or lawsuit, the investigation of their complaint will be suspended.
 - b. Forward these matters to the KCPD OGC pending further action.
 - c. Will reevaluate the complaint for further consideration and investigation, if warranted, once the claim or lawsuit has been resolved.
2. Complaints involving police use of force where the case is pending review by a prosecuting attorney or grand jury. At the conclusion of the review by the prosecuting attorney or grand jury, the complaint will be reevaluated by OCC for further action, unless a claim or lawsuit has been filed.

PROCESSING AND INVESTIGATING

- A. Upon receiving an unresolved complaint, the Executive Director of OCC will assign the complaint to an Analyst. The analyst will contact the complainant to determine whether there is any additional action that can be taken to resolve the complaint without formal investigation.
1. If resolution appears possible at this point:
 - a. The file will be returned to the Executive Director of OCC who will attempt to conciliate the complaint or will return the complaint to KCPD to determine whether it can be resolved prior to an IAU investigation.
 - b. The Executive Director may also employ mediation as a means to resolve the complaint. Although any complaint may be mediated or conciliated, this process is particularly appropriate in cases involving the lack of police service or improper procedure.
 2. If resolution does not appear possible, the Analyst will take the following actions:
 - a. Determine the appropriate category or categories of the complaint that require investigation.
 - b. Take photographs of any injuries that the complainant attributes to the circumstances of the complaint.
 - c. Obtain a Medical Release Authorization from the complainant if the complainant alleges that medical treatment was required as a result of the incident which is the subject of the complaint. Medical records will be obtained only after the complainant gives a formal statement.
 - d. Enter the relevant information from the Community Complaint Report into the OCC Database and forward a copy of the original signed complaint report and any related documentation to IAU.
 - e. Request that IAU schedule the initial formal statement of the complainant with an IAU detective.

3. Each complaint file will contain on the face of the file a time and date record. Each individual handling with the file during the processing of the complaint will note when the file is received by that individual, when the file is forwarded to another individual, and the name of the individual to whom the file is forwarded.

B. Formal Statements

1. If the complainant appears for the initial formal statement and indicates that they do not want to continue with the complaint:
 - a. The complainant will not be encouraged or discouraged in any manner in making that decision as the decision to withdraw or dismiss a complaint is that of the complainant.
 - b. The complainant will be asked to sign a Withdrawal of Complaint, Form 5489 P.D. (Withdrawal Form).
 - c. If the complainant signs a Withdrawal Form, OCC shall close the file.
2. If the complainant fails to keep the appointment and thereafter fails to respond to reasonable efforts to reschedule the appointment to give the initial formal statement, the complaint file will be returned to OCC for its review and consideration for closure.
3. A representative of OCC may be present during the taking of the complainant's formal statement by an IAU detective. The OCC representative will act solely as a monitor during the taking of the statement, and will be present at the taking of any supplemental statement by IAU.
4. All statements of the complainant shall be verified by oath or otherwise taken under penalty of perjury as required by Section 84.430 RSMo.

C. Investigation of a Complaint

1. After the initial formal statement is taken from the complainant, the file will be handled by IAU for investigation in accordance with their written directives.
2. After a formal statement has been taken from the complainant or if at any time during the investigation IAU reasonably believes there has been no clear violation of KCPD directives, the file will be forwarded to OCC for review and consideration for closure. If OCC reviews the file and determines:

- a. There is no violation of KCPD written directives, a finding of unfounded or closed will be made by OCC and the complaint file will be closed.
 - b. That further investigation is required, the investigation will continue. The justification for continuing the investigation will be set out in a memorandum that will be placed in the case file, and the file will be forwarded to the commander of IAU.
3. In the event that IAU requests additional time to investigate the file, The OCC Executive Director and the Commander of IAU will jointly approve any request for additional time. If there is disagreement on whether additional time should be granted, the decision whether to grant additional time will be referred to the Board whose decision shall be final.
4. If there is a disagreement between the Commander of IAU and the OCC Executive Director as to the subject matter and scope of an investigation, the matter will be referred to the Board of Police Commissioners.

D. Completed Investigations

1. Upon completion of the IAU investigation the file will be forwarded to OCC.
2. Upon receiving the complaint file, the Executive Director of OCC will assign the file to an Analyst who will review the file for purposes of making a recommendation on the complaint.
 - a. If additional information is needed to complete the analysis, the Analyst will set forth the additional specific information required in order to complete the analysis.
 - b. The reason for additional information will be specifically set out in the request.
 - c. The file will then be returned to IAU for purposes of obtaining the additional information.

E. Use of Polygraph Examinations in OCC Investigations

1. In all cases where OCC believes that a polygraph examination is necessary, OCC will first request the complainant to submit to the polygraph examination.
2. The Executive Director may request that a polygraph examination be conducted of the complainant.

- a. The complainant has the right to refuse a polygraph examination.
 - b. If the complainant consents to the polygraph examination, the Executive Director will submit the request with the complaint file directly to the Polygraph Section and state the reason for requesting the polygraph examination.
 - c. OCC will coordinate with the Polygraph Section to schedule the examination.
 - d. Upon completion of the polygraph examination, the results and the complaint file will be forwarded directly to OCC.
3. If the polygraph examination of the complainant:
- a. Is inconclusive or shows deception, OCC will make its recommendation on the complaint and submit the file as outlined in Annex C of this directive. In this event no polygraph examination will be requested of the department member.
 - b. Supports the complainant's allegations; OCC may recommend to the Chief that the department member who is the subject of the complaint submit to a polygraph examination.
 - (1) The Executive Director will submit such recommendation with the complaint file to the Chief.
 - (2) If the Chief agrees with the recommendation, the Chief will direct the department member to take a polygraph examination.
 - (3) If the Chief disagrees with the recommendation, the Chief will advise the Executive Director of the reasons. If the Executive Director, after consideration of the Chief's reasons, continues to recommend that the department member submit to a polygraph examination, the matter will be referred to the Board of Police Commissioners.
4. OCC shall not consider the failure of a complainant to submit to a polygraph examination in making its findings and recommendations regarding a complaint. The analysis of the complaint will be conducted utilizing the existing evidence otherwise gathered by the investigation.

ANALYSIS AND RECOMMENDATIONS

- A. Upon receipt of a completed investigative file, the Analyst assigned to the file will review the file for purposes of making a determination of unfounded, exonerated, not sustained, or sustained.
- B. In making this finding, the Analyst will determine the elements of the alleged complaint. The Analyst will then determine what evidence exists to support or refute each of the elements of the alleged incident. Only the facts relevant to the complaint being made will be considered.
- C. The analyst will then prepare a Summary of Analysis.
 - 1. The Executive Director of OCC shall review the Summary of Analysis and either approve it or return it to the Analyst for further action.
 - 2. After the Executive Director's approval of the Summary of Analysis, the OCC Office Manager shall prepare the final copy of the Summary of Analysis and letters for presentation to the Chief and/or Board.
 - 3. OCC shall have 45 calendar days to complete these tasks.
- D. When the summary is approved, a copy of the Summary of Analysis shall be forwarded to each member of the Board and to the Secretary/Attorney. A copy of the Summary of Analysis and the original IAU investigative file will be forwarded to the Chief and handled according to KCPD current written directives
- E. Except in cases where the Board makes the final determination, OCC will:
 - 1. Provide the Chief and the Board with notice of the final determination.
 - 2. Notify the complainant of the determination. This notification will be in the form of a letter signed by the Executive Director of OCC.
 - 3. Notify all department members involved in the investigation of the final determination.
 - 4. Return the original internal investigation file to IAU.
- F. Upon receipt of a final sustained complaint, the Chief will make the final determination on discipline or training in accordance with KCPD current written directives.

- G. If new or previously undisclosed evidence becomes available after final disposition of a complaint, within thirty (30) days of the discovery of such evidence, either the department member or the complainant may request the OCC Executive Director to reconsider the decision of OCC. This request for reconsideration is limited to the findings of OCC and does not pertain to disciplinary actions imposed by the Chief.

ACCESS TO COMPLAINT FILES

- A. Access to complaint files created by and at the direction of OCC will be governed by Chapter 610 RSMo. and resolutions of the Board dealing with the release of such files.
- B. Any department member who is the subject of a complaint or the department member's attorney has the right to review and take notes from the completed complaint file. The file shall not otherwise be reproduced.
- C. Records, files, medical records, documents, photographs, and other materials compiled and maintained by OCC that pertain to investigations resulting from complaints will not be subject to disclosure, except as described above.
- D. The Executive Director of OCC will notify the Secretary/Attorney with regard to any request to copy or acquire any part of a complaint file. The Secretary/Attorney will notify the KCPD OGC of any such request.
- E. Subject to any requirements imposed by law, KCPD, Board, and OCC shall not release to any federal, state, or private employer, or other individual any information pertaining to a department member which did not result in formal disciplinary action unless an authorization is executed by the department member in question allowing such release.
- F. OCC complaint files are personnel records of the department members. Additionally, such files often describe private, confidential matters pertaining to a complainant (and occasionally to a member) relating to medical, legal and other private matters. These files are not investigations of criminal conduct.